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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,325	04/14/2004	Carl-Jurgen Schroth	SCHROTH-5	5402
20151	7590	02/09/2005	EXAMINER	
HENRY M FEIEREISEN, LLC 350 FIFTH AVENUE SUITE 4714 NEW YORK, NY 10118			WHITE, RODNEY BARNETT	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 <b>Office Action Summary</b>	<b>Application No.</b> 10/824,325	<b>Applicant(s)</b> SCHROTH, CARL-JURGEN	
	<b>Examiner</b> Rodney B. White	<b>Art Unit</b> 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                   |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                              | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 15, 21, and 23, it is unclear as to whether the Applicant intends to claim the apparatus in combination with the "vehicle". In claim 1 and 23, applicant defines an "Apparatus for positioning an occupant of a vehicle in an area of a closeable roof hatch". The vehicle is not positively claimed and does not appear to be part of the invention. Then, in claim 1, Applicant defines "a carrier frame suspended with a vehicle." In claim 15, Applicant defines "rail mounted interiorly to a body of the vehicle." In claim 21, Applicant defines "a carrier frame suspended interiorly from the vehicle's roof." In claim 23, Applicant defines "rail mounted interiorly to the vehicle's roof." All of these instances read as if the "vehicle" is positively claimed when Applicant attaches or secures the structures to the vehicle, whether it is the interior or the roof. In claim 13, "the restraining means" lacks antecedent basis. Claim 13 depends from claim 1, but there is no "restraining means" defined in claim 1. Should claim 13 have depended from claim 12 instead, where the "restraining means" is defined?

The aforementioned problems render the claim vague and indefinite.

Clarification and/or correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-9, 14, 16-17, and 19-22 rejected under 35 U.S.C. 102(b) as being anticipated by Jessup et al (U.S. Patent Application Publication No. 2002/0021041 A1).

See Figures and specification. As far as claim 3, the “for loading the seat assembly to seek a stretched configuration.” is given no weight. In claim 7, the sensor limitation is satisfied since the “for moving the seating area into a horizontal disposition” is given no weight. The same applies to other claims that contains “for or functional language.

***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jessup et al in view of Shelton et al (U.S. Patent No. 3,179,360).

Jessup et al teach the structure substantially as claimed but does not teach the footwear restraining means. However, Shelton et al teach such a strap 40 to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the apparatus, as taught by Jessup et al to include a footwear restraining means, as taught by Shelton et al, since such a strap would prevent movement of the foot or calf of the occupant that could cause injury to the occupant during an accident.

Claims 10-11, 15, 18, and 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

**Attention:** Please note that Claim 11 is objected to as containing allowable subject matter. However, if Applicant chooses to incorporate that language into an independent claim, he should re-word it to read - - the standing

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area is displaceable in a horizontal direction - -. Applicant should get rid of the "for" or functional language. The same applies to claims 15 and 23 as well.

Applicant should re-word it to read - - allowing movement .....- -.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schwartz, Adams, Stoki, and Clerx teach similar structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney B. White whose telephone number is (703) 308-2276. (This number will be (571) 272-6863 when the Tech Center moves to the new U.S. Patent And Trademark Office facility in Alexandria, Virginia.)

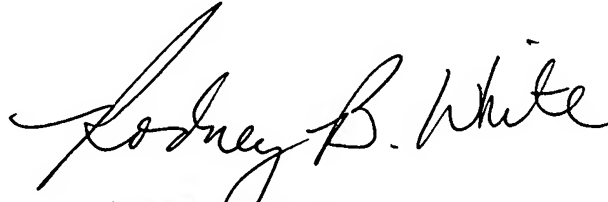
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (703) 308-0827. (This number will be (571) 272-6856 when the Tech Center moves to the new U.S. Patent And Trademark Office facility in Alexandria, Virginia.)

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rodney B. White,  
Patent Examiner  
Art Unit 3636  
February 7, 2005



**RODNEY B. WHITE**  
**PRIMARY EXAMINER**